

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ma, Smyth, and Torrico)
(Coauthor: Senator Yee)

February 25, 2009

An act to add Section ~~3005~~ 3027.3 to the Family Code, relating to custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Beall. Custody and visitation: nonscientific theories.

Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. *Existing law requires all child custody evaluators to have completed specified training relating to domestic violence and child abuse.* Existing law requires the Judicial Council to adopt standards for court-connected evaluations, investigations, and assessments related to child custody.

Existing law also requires the Judicial Council to formulate rules of court that establish education, experience, and training requirements for child custody evaluators and to establish related forms, as specified.

~~This bill would prohibit a court from relying upon a nonscientific theory, as defined, submitted to the court by a court-appointed or court-connected professional mediator, evaluator, or other person in making a determination regarding the best interest of, child custody of or visitation with a child. The bill would provide that a report that relies on a nonscientific theory would not be admissible into evidence in any proceeding to determine custody or visitation and would make a related change. The bill would also prohibit a court from relying upon any conclusion by an investigator or evaluator that is not supported by observed actions, behaviors, or conduct of a parent that may affect or may impact the child's best interest. The bill would prohibit those providing training approved by the Judicial Council, including the Judicial Council, from training professionals to rely on unscientific theories.~~

This bill would provide that a child's expression of significant hostility toward a parent may be admitted as possible corroborating evidence that the parent has abused the child. The bill would prohibit a court from concluding that an accusation of child physical or sexual abuse against a parent is false based solely on the child's expression of significant hostility toward the parent. The bill would also require that, on and after January 1, 2010, these provisions be included in all training required of child custody evaluators, and would, consequently, require the Judicial Council to revise training standards for child custody evaluators. The bill would include a statement of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. It is the intent of the Legislature that courts strive*
- 2 *to protect the safety and best interest of children in custody matters*
- 3 *by ensuring that allegations of physical and sexual abuse are*
- 4 *investigated appropriately or referrals are made to the child*
- 5 *welfare services agency.*
- 6 *SEC. 2. Section 3027.3 is added to the Family Code, to read:*
- 7 *3027.3. (a) A child's expression of significant hostility toward*
- 8 *a parent may, in the discretion of the court, be admitted as possible*

1 *corroborating evidence that the parent has abused the child. The*
2 *court may not conclude that an accusation of child physical or*
3 *sexual abuse against a parent is false based solely on the child's*
4 *expression of significant hostility toward the parent.*

5 *(b) On and after January 1, 2010, the provisions of this section*
6 *shall be included in all training required pursuant to Section*
7 *3110.5.*

8 ~~SECTION 1. (a) The Legislature finds and declares that it is~~
9 ~~the policy of the State of California to ensure that all children are~~
10 ~~safe from physical and sexual harm.~~

11 ~~(b) It is also the intent of the Legislature to ease the burden on~~
12 ~~family court resources caused by reliance on nonscientific theories~~
13 ~~in family court proceedings, resulting in unnecessary prolongation~~
14 ~~of cases by discouraging proper investigation of crimes and shifting~~
15 ~~the fact finding process away from determining whether children~~
16 ~~are safe from physical and sexual abuse.~~

17 ~~SEC. 2. Section 3005 is added to the Family Code, to read:~~

18 ~~3005. (a) As used in this chapter.~~

19 ~~(1) A "nonscientific theory" is one that is not consistent with~~
20 ~~generally accepted clinical, forensic, scientific, diagnostic, or~~
21 ~~medical standards, and does not meet the Kelly-Frye standards of~~
22 ~~evidence.~~

23 ~~(2) An "alienation theory" is a nonscientific theory which is~~
24 ~~based on the assumption that a child's refusal to visit with,~~
25 ~~expression of hostility toward, or report of physical or sexual abuse~~
26 ~~by a parent is caused or maliciously fabricated by the other parent.~~

27 ~~(b) A court may not rely upon a nonscientific theory, including,~~
28 ~~but not limited to, an alienation theory, submitted to the court by~~
29 ~~a court-appointed or court-connected professional mediator,~~
30 ~~evaluator, or other person in determining the best interest of, or~~
31 ~~custody or visitation arrangements for, children.~~

32 ~~(c) (1) A report that relies upon a nonscientific theory, including~~
33 ~~an alienation theory, shall not be admissible into evidence in any~~
34 ~~proceeding to determine custody or visitation.~~

35 ~~(2) Any report by an evaluator, investigator, or recommending~~
36 ~~mediator to the court regarding the best interests of a child for~~
37 ~~purposes of determining child custody or visitation shall not be~~
38 ~~read or considered by the court until the parties stipulate to its~~
39 ~~admissibility into evidence, or until a properly noticed evidentiary~~

1 ~~hearing is held at which the admissibility of the report is~~
2 ~~established.~~

3 ~~(d) (1) A court may not rely upon any conclusion by an~~
4 ~~investigator or evaluator that is not supported by observed actions,~~
5 ~~behaviors, or conduct of a parent that may affect or may impact~~
6 ~~the child's best interest.~~

7 ~~(2) Nothing in this section precludes a child custody investigator~~
8 ~~or evaluator from interviewing parents and children, observing~~
9 ~~parent-child interaction, speaking to collateral sources, consulting~~
10 ~~with other professionals regarding psychological data, or using his~~
11 ~~or her professional expertise to integrate data, assess and evaluate~~
12 ~~psychological issues, or communicate the results of those analyses~~
13 ~~to the court consistent with ethical and professional standards.~~

14 ~~(e) Those providing Judicial Council-approved training to~~
15 ~~mediators, evaluators, investigators, judges, and other court-related~~
16 ~~or court-connected professionals, including the Judicial Council,~~
17 ~~may not train professionals to rely upon unscientific theories,~~
18 ~~including, but not limited to, alienation theories.~~